Manimark Corporation *and* Joseph Butner. Case 7–CA–28430

February 7, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On August 16, 1989, Administrative Law Judge Marion C. Ladwig issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief, cross-exceptions, and a supporting brief.

On May 22, 1990, the National Labor Relations Board remanded the proceeding to the judge for certain further findings of fact, credibility resolutions, conclusions of law, and recommendations. Specifically, the complaint, as amended at the start of the hearing, alleged that a threat of plant closure by the Respondent was made within a week of the election.[1] Because the judge believed that the General Counsel did not allege that this threat occurred during the 10(b) period, he failed to consider testimony relevant to this alleged unfair labor practice and to make credibility findings with respect to such testimony. In light of the fact that the complaint alleged, and the General Counsel asserted, that the conduct complained of did occur within the 10(b) period, we remanded the case to the judge for him to prepare a supplemental decision containing specific findings of fact, credibility resolutions, conclusions, and recommendations concerning the threat allegedly made by the Respondent's president.

The judge issued the attached supplemental decision on June 27, 1990. Subsequently, the Respondent filed exceptions to the judge's supplemental decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the judge's decision and supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the supplemental recommended Order as modified.

The judge failed to find that the Respondent violated Section 8(a)(1) when it interrogated employees because he noted the ''absence of any showing of coercion.'' We disagree and conclude that the interrogation of employee Day by Supervisor Smith on the day of the election was unlawful. Day testified without controversion that she had asked Smith on several occasions whether she could vote in the election.[4] On the day of the election, she again asked Smith if she could vote. Smith asked which way she was voting. After Day said she would not answer, Smith said she could not vote. Smith's questioning of Day was thus expressly designed to elicit Day's union sentiments and, further, Smith's response left the clear impression that Day could not vote, even under challenge, because she would not provide an answer. Contrary to the judge, we find that such questioning has a chilling effect on the union activities of employees and interferes with employee exercise of rights guaranteed by the Act. See *Kellwood Co.*, 299 NLRB 1026 (1990), and *Nemacolin Country Club*, 291 NLRB 456 (1988).[5]

ORDER

The National Labor Relations Board adopts the recommended supplemental Order of the administrative law judge as modified below and orders that the Respondent, Manimark Corporation, Belleville, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraphs 1(e) and (f) and renumber former paragraph 1(e) as paragraph 1(g).

''(e) Prohibiting employees from discussing wages with other employees.

''(f) Coercively interrogating any employees about union support.''

2. Add the following as the last sentence of paragraph 2(a).

''Loss of earnings for the period of time Butner was removed from his overtime route will by computed consistent with *Ogle Protection Service*, 183 NLRB 682 (1970).''

3. Substitute the attached notice for that of the administrative law judge.

[1] Member Devaney noted in the order remanding that, at the hearing, the Respondent objected to amendment of the complaint to include a threat of plant closure. He further noted that the Respondent did not raise this issue to the Board in its exceptions, and thus the question of amendment of the complaint is not before us.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless a clear preponderance of all the relevant evidence convinces us they are incorrect. *Standard Drywall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In adopting the judge's conclusions that the Respondent unlawfully discriminated against and discharged employee Butner, we note that these conclusions are not affected by consideration of the alleged altercation between Butner and his supervisor referred to by the Respondent. This event was not discussed by the judge because there is no evidence that it was relied on by the Respondent when it took action against Butner.

[4] The record reflects that Day was an attendant, and that attendants were excluded from the unit. However, Day testified to the effect that she believed her position was unclear because her salary and duties were analogous to those of the drivers.

[5] In light of our finding that Smith's March 23 interrogation of Day was unlawful, we find it unnecessary to pass on the alleged April 1 interrogation of Day by Vending Manager Dunahoo. Any such finding would be cumulative. The General Counsel in its cross-exceptions further asserts that an interrogation of Butner by Dunahoo the night of the election was unlawful. Because this interrogation was not alleged or fully litigated, we decline to pass on it.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge, remove from a weekly overtime route, issue a warning letter to, or otherwise discriminate against any of you for supporting Local 124, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO or other union.

WE WILL NOT threaten any of you that we will close the business if the Union wins the election.

WE WILL NOT indicate that your job is in jeopardy for supporting a union.

WE WILL NOT, if you are subpoenaed by the NLRB, refuse you time off because you are not testifying for the Company.

WE WILL NOT prohibit you from discussing wages with other employees.

WE WILL NOT coercively interrogate you about your union support.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Joseph Butner immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits, less any net interim earnings, plus interest.

WE WILL reinstate Joseph Butner to the weekly overtime route at the University of Michigan Hospital.

WE WILL notify him that we have removed from our files any reference to his discharge, removal from the overtime route, and warning for being late and that they will not be used against him in any way.

WE WILL rescind our policy prohibiting discussion of wages among employees.

MANIMARK CORPORATION

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. This case was tried in Detroit, Michigan, on January 30–31, 1989. The charge was filed September 12 (amended at the trial) and served September 14, 1988.[1] The complaint was issued December 26.

Route driver Joseph Butner, the Charging Party, was a favored employee until he began organizing the Union in late January. After the Union filed a petition on February 16, the Company referred to Butner as a ''troublemaker'' for starting the Union and on February 23 gave him three warning letters at one time. One warning was for ''talk[ing] to other employees regarding their wages.''

On March 24, the day after the Union lost the election, the Company removed Butner from a weekly overtime route and suggested that he consider other employment. On July 5 it gave him a fourth warning letter and on August 26, when he made the mistake of leaving a vent window on his truck open (but with the alarm on), the Company summarily discharged him.

The primary issues are whether the Company, the Respondent—after the March 14 beginning of the 10(b) limitation period—(a) enforced an illegal unwritten rule prohibiting employees from discussing wages, (b) discriminatorily removed Butner from the overtime route, issued him the fourth warning letter, and discharged him for supporting the Union, and (c) unlawfully informed a subpoenaed witness that she could not have time off from work to attend the trial because she was not testifying for the Company, violating Section 8(a)(1) and (3) of the National Labor Relations Act.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, provides vending and cafeteria services from its facility in Belleville, Michigan, where it annually receives goods valued over $50,000 directly from outside the State. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 124, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Section 10(b) Limitation Period*

The complaint does not allege any violations of the Act before March 14, which is 6 months before service of the charge.

The General Counsel, however, contends in his brief (at 29) that the Company ''violated Section 8(a)(1) throughout the election campaign'' (from late January until the March 23 election). He cites actions taken against route driver Joseph Butner and evidence of other conduct before March 14, including (1) interrogation by President Ralph Krochmal, General Manager Gary Morris, Vending Manager Richard

[1] All dates are in 1988 unless otherwise indicated.

[2] The General Counsel's unopposed motion to correct the transcript, dated March 23, 1989, is granted and received in evidence as G.C. Exh. 9.

Dunahoo, and Supervisor Randy Smith, (2) threatened plant closure, (3) created impression of surveillance, (4) telling employee to engage in surveillance, (5) promises of promotion and benefits, etc. He then argues that although ''no remedy can be sought'' for these ''violations'' outside the 10(b) limitation period, they are ''relevant background evidence'' for violations within the limitation period.

I do not rule on the legality of any of the Company's conduct before March 14, but I do find the Company's giving Butner three warning letters and calling him a ''troublemaker'' for starting the Union (discussed below) to be relevant background to Butner's August 26 discharge.

I credit the testimony of route driver Walter Ford that Vending Manager Dunahoo (despite his denial, Tr. II, 103) told Ford during the election campaign that the Company ''knew for sure'' that Butner started the Union and that Butner ''would be fired sooner or later'' (Tr. 172). (By his demeanor on the stand, Ford impressed me as being an honest witness.)

I am not convinced, however, that this happened after March 14, when President Krochmal was telling employees in meetings that there was no truth to Butner being fired as long as he did a good job (Tr. 72, 176; Tr. II (2d of trial), 48). I therefore do not rule on the legality of Dunahoo's statement. Furthermore, because of Krochmal's denials in the meetings, I do not rely on Dunahoo's statement in determining the Company's motivation for Butner's discharge.

B. *Discharge of Joseph Butner*

1. A good employee

Route driver Butner was considered a good employee before he contacted the Union in late January and began organizing the employees. Hired in October 1984, he was the second senior employee among the 15 route drivers. (Tr. 12–13.) As discussed below, he was assigned ''the best route, the best hours.''

President Krochmal had personally recognized Butner's good work performance. In August 1987, Krochmal told him that Krochmal had heard he was considering leaving his job because the Company was changing its insurance policy. (Butner's wife was expecting a baby.) It is undisputed, as Butner credibly testified (Tr. 56), that Krochmal said: ''Joe, you're a good employee and I'm willing to pay the $1000 deductible for our insurance out of my pocket.''

Before his union organizing began, Butner had never been given any written warning letter (Tr. 24). At the time of his discharge, as discussed, his supervisor (Michael Bailey, who did not testify) admitted to him that ''personally I've never had a problem with you or with your work.''

2. Three warning letters at one time

a. *Warning for discussing wages*

On February 23, the week after the Union filed a petition on February 16, General Manager Morris called Butner to the office and gave him three written employee warning letters (Tr. 5, 22). The first one (G.C. Exh. 2), dated February 22, read:

> Joe received a verbal warning from Gary Morris not to talk to other employees regarding their wages.

The warning concerned Butner's conversation about February 18 with attendant Pam Frost, a company employee who serviced vending machines at the General Motors parts warehouse. In Butner's conversation with Frost, while he was making a delivery to the warehouse, he mentioned the Company's $6 attendant wage rate (which was the rate being paid at the University of Michigan Hospital). (Tr. 16–17.) After the conversation, Frost complained to General Manager Morris that she was not making this rate, and Morris explained that the difference was the night differential at the University of Michigan Hospital (Tr. 55–56).

The next day Morris asked Butner if he had talked to Frost about her wages and he answered yes. Morris said that doing so was a violation of company policy and that ''Everyone knows you just don't discuss wages with other employees.'' Butner said he was not aware of this policy and that he would not do it again. (Tr. 17–18, 68.)

Even though Butner denied knowledge of the unwritten rule against discussing wages and promised not to do it again, the February 22 written warning letter was prepared—Butner's first in over 3 years of employment. (Because of Supervisor Bailey's statement to Butner at the time of his discharge that ''personally I've never had a problem with you or with your work,'' I note that the warning letter bears a printed signature for Supervisor Bailey after the words, ''Warning Written By,'' not Bailey's signature as on later warning letters.) On February 23 General Manager Morris presented the warning letter to Butner, together with the two other warning letters.

Meanwhile, Vending Manager Dunahoo telephoned attendant Kimberly Day at the University of Michigan Hospital. Dunahoo asked if she had talked to anybody about her wages and she told him yes. Dunahoo said she was not allowed to talk to anybody about her wages, except to Dunahoo or the company president. A few days later she asked her supervisor, Randy Smith, why Dunahoo had questioned her about this. Smith explained that an attendant (Frost) was upset about her wages because Butner had told the attendant ''how much that we made at the U of M Hospital.'' (Tr. 155–156.)

It is undenied, as Day further credibly testified, that both Dunahoo and Smith talked to her about the Union. Dunahoo stated that Butner was ''a *troublemaker* in starting the Union [emphasis added],'' and Smith also referred to Butner's starting the Union. (Tr. 154–155.) General Manager Dunahoo, who called Butner a ''troublemaker,'' signed each of the three warning letters as ''Supervisor,'' even though Michael Bailey was Butner's supervisor.

b. *Warning for unlocked machine*

Butner's second employee warning letter, dated February 23 (G.C. Exh. 3), read:

> Randy Smith had to go to Pray Harold [building] Soda 3 and close door of Machine.

About 30 minutes before General Manager Morris gave Butner this and the other two warning letters on February 23, Morris called him to the office upon his return from his route. There, as Butner credibly testified (Tr. 19):

> Gary [Morris] asked me if I had serviced a particular vending machine called Soda 3 [in the Pray Harold

> building] on the Eastern Michigan campus. I said that I had. He said, well, you left it open. We had to send [Supervisor] Randy Smith out to close it. I told him I found that hard to believe, but I guess it was possible.''

As indicated by the other employee warning letters that the Company produced at the trial, this was the first time that a warning letter had been issued for this offense. (I note that R. Exhs. 3 & 4 are not warning letters, merely notes to the file.) Later in the election campaign, on March 2 and 16 (R. Exhs. 6 and 12A), two similar warning letters were issued to other employees.

This offense was a fairly regular occurrence among the drivers and attendants, caused by the closed door not being pressed hard enough against the frame to engage the ''T'' bar (Tr. 132–134, 162, 185–186; Tr. II, 36–38). The Company admits in its brief (at 21): True enough, *this happens* from time to time *to everyone* [emphasis added].''

It has even happened when an employee's work was being checked. On Friday, September 23, General Manager Morris himself was riding with driver Lisa Bohus, checking her route. The next Monday morning Morris stopped in the garage and told Bohms: ''I meant to tell you . . . that one of us left the [cup soda] machine . . . unlocked on the third floor of BNR.'' This occurring after warning letters were issued for this offense during the election campaign, Bohms asked, ''Are we both going to get written up for this?'' They both ''kind of laughed.'' (Tr. 103–104.)

c. *The overhead door warning*

Butner's third employee warning letter, dated February 23 (G.C. Exh. 4), which was given him at the same time on that date, read:

> Joe received a verbal warning from Gary Morris not to leave overhead doors open and unattended.

In the conversation about 30 minutes earlier, when General Manager Morris mentioned the unlocked vending machine, Morris added that someone saw Butner leave the overhead door open. Morris was referring to Butner's daily practice, for over 2 years, of pressing the overhead door control button after loading his truck and, while the door was opening, going to pick up his already-poured cup of coffee in the office. (Tr. 19–21, 64.)

Butner responded: ''I [have] always done it that way, and I wasn't away from the door for a period of more than 15 seconds or so.'' Morris said it was a security problem, that ''we couldn't do that. Someone may be able to come in and rob us.'' Butner promised that it would not happen again. (Tr. 19–20; Tr. II, 33.)

The evidence is clear that both before and after February 23, the overhead door was left open for long periods of time (Tr. 96–99, 134–136, 141–142).

When Morris showed him and explained all three of the warning letters, Butner responded (Tr. 22):

> I [don't] think it [is] fair, that other employees [have] done the same type of so-called violations and not received any warning at all. He said, well, you're entitled to your opinion.

Under all the circumstances, including the Company's calling Butner a ''troublemaker'' for starting the Union, I find that the Company issued the three warning letters to him in reprisal for his union organizing.

3. Removal from overtime route

Butner served as the union observer at the March 23 election. The vote was 14 to 7 against union representation.

On March 24, the day after the election, President Krochmal, General Manager Morris, and Vending Manager Dunahoo spoke to Butner in Krochmal's office. In the conversation, as Butner credibly testified, Morris told him (Tr. 37):

> If you want to get the Union in here, you must be dissatisfied with the job. If you're dissatisfied with the job, you have a bad attitude. Therefore, we don't want you spreading this bad attitude. Therefore, we're not going to let you have any more contact with the attendants.

Butner asked Morris if that included the University of Michigan route. Morris answered, ''Yes. You won't be doing that anymore.'' (Tr. 37.) His removal from the University of Michigan Hospital route deprived Butner of $55 in overtime each week. For the past 2 years he had made a delivery to that hospital every Friday, after his regular hours. (Tr. 40.)

At one point Morris admitted his concern about Butner organizing the attendants. Then questioned about the March 24 conversation, Morris testified: ''I had told Joe that in his contact with the attendants—he was not to discuss their wages *or in any way incite them as to union activity*'' (Tr. II, 58, emphasis added).

In this conversation General Manager Morris also gave a related reason for removing Butner from the University of Michigan route. As Butner credibly testified, Morris told him that he had again ''violated their policy regarding discussing wages'' when he ''tried to get [University of Michigan Hospital attendant] Kim [Day] included in [the March 23] vote'' (Tr. 38). Morris admitted taking Butner off the University of Michigan route because he thought Butner was talking to Day about wages (Tr. II, 72–73).

I find that both reasons for removing Butner from the University of Michigan Hospital route were unlawful. His removal for the first reason (to prevent him from spreading his prounion ''bad'' attitude to the attendants, ''incit[ing] them as to union activity'') was unlawful interference with the employees' protected activity and also was unlawful discrimination against him for supporting the Union, in violation of Section 8(a)(1) and (3) as alleged in the complaint.

The second reason (to penalize Butner for violating the Company's unwritten rule, prohibiting all employee discussions of their wages) was enforcement of a clearly illegal rule. The court held in *Jeannette Corp. v. NLRB*, 532 F.2d 916, 919–920 (3d Cir. 1976): ''[W]e sustain the Board's finding that the Company's rule broadly prohibiting discussion of wages among employees is an unfair labor practice under section 8(a)(1).''

I therefore find, as alleged in the amended complaint, that the Company removed Butner from the overtime route to enforce ''its unlawful policy prohibiting employees from discussing wages with other employees,'' in violation of Section

8(a)(1). I also find, as alleged in the complaint, that the Company ''interfered with its employees' Section 7 rights by reiterating [after March 14] its policy prohibiting employees from discussing wages with other employees,'' further violating Section 8(a)(1).

In addition I find that these reasons that General Manager Morris gave for removing Butner from the overtime route demonstrated a concern that Butner would not stop his union organizing and, in another campaign, would attempt to spread it to the attendants, who had been excluded from the vote the day before (Tr. 5). I therefore find them to be relevant to Butner's discharge 5 months later.

In this connection I note that during the election campaign, President Krochmal referred to an election a year later. After asking Butner ''How did you pick this Local?'' Krochmal criticized the Union and told Butner (Tr. 30) that we ''may have to vote no on this [local] and wait till next year.''

I also note that on April 1 (the week after the election), Vending Manager Dunahoo asked attendant Day why she would want to be involved in the union election and proceeded to ''straighten out'' her pay problems. He revealed the Company's continuing concern about Butner's union organizing by telling Day that Butner was ''a *troublemaker* for starting everything [emphasis added].''

In the absence of any showing of coercion, I dismiss the allegations of unlawful interrogation since March 14.

4. ''Should consider other employment''

It is undisputed that in the same conversation on March 24, as Butner credibly testified (Tr. 37), President Krochmal reminded Butner that Krochmal had given him ''the best route, the best hours'' and stated: ''Joe, I'm very disappointed in you. Trying to get the Union in here was the lowest possible thing you could have done.''

General Manager Morris also stated that ''we're very disappointed in you.'' He further stated, ''I don't know how you can look yourself in the mirror in the morning knowing you have to come to this job.'' He then suggested that Butner should *consider other employment*. Thinking that Morris wanted him to quit immediately, Butner said that ''this takes time.'' Morris responded, ''Well, I'd like a decision by Monday.'' (Tr. 37.) Butner withstood the pressure to quit.

According to Morris, after removing Butner from the University of Michigan route, ''I also told Joe that I felt he was bitter and unhappy and if he felt that bad, he probably should go some place else and find work.'' Morris then claimed that he told Butner, ''If he would keep his nose clean, he wouldn't have a problem.'' (Tr. II, 55.) I credit Butner's account (Tr. 37; Tr. II, 120) and discredit this claim. I find, however, that even if this claim were true, the statements by both Krochmal and Morris—particularly in the context of Morris' suggestion that Butner should consider other employment—were clearly coercive, indicating that his job was in jeopardy because of his union activity.

I therefore find that in these circumstances, the statements by President Krochmal and General Manager Morris, revealing their unhappiness with Butner's support of the Union, were coercive and violated Section 8(a)(1) of the Act.

I also find that these coercive statements by the top management of the Company are relevant in determining the Company's activation for summarily discharging Butner.

5. Warning for being late

About 3 months later, on July 5, Butner overslept and was 2 hours late on his route, without affecting the service of the route (Tr. 41–42). This was the first time in over a year that he had been late (Tr. 44–45).

Contrary to its policy of issuing warning letters only in problem cases of repeated tardiness (R. Exhs. 4 & 5; Tr. 102–103, 136–137, 142–143, 163–164; Tr. II, 107–108), the Company issued Butner his fourth warning letter (G.C. Exh. 5) since he began organizing the Union. It referred to the ''Previous Verbal Warnings'' dated February 22 and 23 and read: ''Joe received a verbal warning from supervisor for being approximately 2 hours late without calling.'' Supervisor Bailey handed him the letter and said that ''this is a warning letter for being late'' (Tr. 42).

The next day, July 6, Butner learned from route driver Michael Vincent (who also had a route that summer at the Eastern Michigan University campus) that Vincent had been late an hour on July 5 without getting a warning letter (Tr. 43; Tr. II, 114). Upon returning to the warehouse, Butner asked Vending Manager Dunahoo ''how come I received a warning letter for being late and Mike didn't?'' As Butner credibly testified (Tr. 44), Dunahoo said, well,

> ''I'm Mike's supervisor and Mike Bailey is your supervisor.'' He said, ''Mike Bailey chose to give you a warning letter and I chose not to give Mike Vincent a warning letter.'' I told him I didn't think that this was fair, that I was being singled out; and he said, well, he stressed that it was just a verbal warning and that it didn't mean anything.

In fact, Bailey was also Vincent's supervisor (Tr. II, 116–117). Particular because of Bailey's statement to Butner on August 26 that ''personally I've never had a problem with you or with your work, I infer that Bailey (who did not testify) was required to sign the warning letter.

Dunahoo admitted that Butner asked why he received a written warning and Vincent received only an oral one. Dunahoo then claimed: ''I asked Mr. Vincent if he wanted it in writing and he refused.'' (Tr. II, 101.) Citing this implausible claim, the General Counsel observes in his brief (at 18) that this would be an ''Interesting system of discipline.'' I agree and discredit the claim as a fabricated defense. Vending Manager Dunahoo impressed me as being less than candid.

Despite the vending manager's assurance that the July 5 warning letter ''didn't mean anything,'' I note that the August 26 discharge letter (G.C. Exh. 6) cited this warning for late arrival as documentation of Butner's ''deteriorating performance.''

As alleged in the complaint, I find that by issuing the July 5 warning letter to Butner, the Company ''selectively administered a written disciplinary warning'' to him. I therefore find that the Company discriminatorily issued this warning letter also in reprisal for Butner's union activity, violating Section 8(a)(3) and (1).

6. His summary discharge

On August 26, 5 months after being asked to consider other employment, Butner set the alarm on his truck but made the mistake of leaving a vent window open when going

into a building on the Eastern Michigan University campus (Tr. 45–48). President Krochmal, who was early for an appointment in the area, noticed the security violation (Tr. II, 82–83). Upon returning to the truck, Butner assured Krochmal that he did not make a habit of leaving the vent window open and that he would not let it happen again (Tr. 45; Tr. II, 125). Yet Krochmal canceled his appointment and returned immediately to the plant (Tr. II, 85). Although there was no indication that Butner had ever made this mistake before, the Company summarily discharged him after he returned from his route.

By that time the Company had prepared a termination letter (G.C. Exh. 6), which General Manager Morris read to Butner at the beginning of a meeting with him, Krochmal, and Bailey, Butner's supervisor (Tr. 48). The letter stated that Krochmal had unlocked the truck door ''and in doing so, set off the alarm. . . . Krochmal opened the glove box and found a ring of keys that had keys to Manimark's building on it, another security violation.'' (Another driver, who was laid off during the summer recess at the school, had left the keys in the glove box (Tr. 47). Krochmal admitted (Tr. II, 91–92) that the name of the Company was neither on the truck nor on the one key to the building.)

The letter concluded:

> Joe, on February 22, 1988 you received a verbal warning for leaving a soda machine at Pray Harold unlocked and a verbal warning for leaving the garage overhead door open while walking to the front of the building. These past warnings and the security violation today, August 26, 1988, show a blatant disregard for Manimark security policies. Manimark cannot allow this disregard to continue and expose us to financial loss.
>
> These security violations highlight a deteriorating performance, documented by warnings for late arrival and improper conduct. Because of this lack of regard for Manimark policies, your employment at Manimark is terminated as of August 26, 1988.

Thus, the Company was relying on the four employee warning letters that it had given Butner in reprisal for his union organizing. The termination letter specifically refers to warnings for leaving a soda machine unlocked (the first warning letter ever given for this offense), leaving the garage overhead door open (for a few seconds, as the door was opening and Butner was picking up his coffee), and being late (the only time in over a year). General Manager Morris admitted (Tr. II, 74) that the reference to the warning for ''improper conduct'' referred to the February warning letter for ''talk[ing] to other employees regarding their wages'' (enforcing the Company's clearly illegal rule).

After reading the letter, as Butner credibly testified, Morris stated, ''Joe, your employment here has ended,'' but Morris gave him the option of resigning. Butler protested that he was getting ''shafted'' and requested a few minutes.

When Krochmal and Morris left the room, Butner told Supervisor Bailey, ''Mike, you know I'm getting a raw deal, don't you?'' It is undisputed that Bailey responded, ''Well, all's I can say is personally I've never had a problem with you or with your work.'' Butner then wrote out his resignation, stating ''I find that there are no longer conditions in which I can remain employed here and therefore have no alternative but to leave.'' Tr. 51–52; G.C. Exh. 7.) Finding Morris to be a most untrustworthy witness (as discussed below), I do not rely on his account of the meeting (Tr. II, 61–64, 74–80).

7. Disparate treatment

The General Counsel urges the disparate nature of the action taken against Butner as compared to the Company's actions in handling other security violations.

The General Counsel cites primarily route driver Michael Halcomb's losing a set of master keys and an on-call beeper sometime before the Union filed the petition. The keys and beeper were in a call box that he carelessly left on top his car. General Manager Morris testified that the Company had to rekey every vending machine, at a cost to the Company of $4000. Yet the Company required Halcomb to pay only $156 for the beeper (R. Exh. 13) and did not discharge him. (Tr. 138–140, 145–147; Tr. II, 42–45, 87–90.) In contrast, there was no financial loss when Butner carelessly left the vent window open at the university campus, and the Company summarily discharged him. There is no contention that the campus was a high crime area.

Halcomb had been employed less than a year and a half (since April 1987, Tr. 129) and had received a written warning (R. Exh. 4) on November 1987 for continued tardiness. The warning concluded: ''The accounts that you service are suffering from your lateness. This problem must be corrected immediately.'' (I note that later, on March 16, Halcomb was given an employee warning letter (R. Exh. 6), stating: ''[Money] Changer was left unlocked at Polk-Taylor account. Verbal notice.'') As found, Butner had never received a written warning before his union organizing began.

The Company in its brief attempts to justify the disparity in treatment by arguing that Butner had an ''unrepentant attitude'' about the security violation, that he ''treated the incident with nonchalance and even sarcasm when confronted by the owner [Krochmal],'' and that ''his conduct when confronted by the owner did not reveal an attitude or recognition of the problem or anything approaching remorse for what had happened.'' I reject these contentions.

When Butner returned to the truck, as he credibly testified, President Krochmal asked, ''Joe, do you always leave your vent window open?'' He answered, ''No, I don't make a habit of it.'' (Tr. 45.) He also told Krochmal that he ''would not let it happen again'' (Tr. II, 155). I discredit, as a fabrication, Krochmal's claim that Butner ''gives me a smart ass remark'' by saying ''I'll try not to let it happen again,'' then walks away (Tr. II, 84–85). I also discredit Krochmal's claim that Butner's ''attitude'' was ''How are you to tell me where to put my keys or what I should be doing with them'' and that Butner is a ''guy who is telling me to kiss off'' (Tr. II, 89–90). Whereas Butler impressed me most favorably by his demeanor on the stand as an honest, forthright witness, Krochmal appeared to be less than candid.

I agree with the General Counsel that this example demonstrates disparate treatment.

8. Lax security

a. *Examples*

The Company contends in its brief (at 6) that it is ''concerned with maintaining a high level of security.'' To the contrary, I agree with the General Counsel's argument in its brief (at 36) that ''there is extensive evidence establishing [the Company's] relative lack of concern for security.''

Butner credibly testified that in 1985, he drove his truck with a broken vent window several weeks after reporting it to Vending Manager Dunahoo before the vent was repaired. On each of about four or five occasions, after reporting to Dunahoo that the alarm on his truck was not working, he drove from a few days to a couple of weeks before the alarm was fixed. (Tr. 55–56.) After reporting the problem to Dunahoo, for about 6 months on one route and about 16 or 18 months on another, he drove a truck in which the safe was too small to hold all the money (daily receipts from the vending machines), sometimes leaving from several hundred to several thousand dollars in the truck outside the safe (Tr. II, 123–125).

On two or three occasions route driver Halcomb drove his truck several weeks without an alarm after notifying Supervisor Smith. Then Halcomb quit in September (after Butner's discharge), Halcomb had been driving without an alarm about 2 weeks after notifying Smith of the problem. (Tr. 137–138.) Also Halcomb drove a spare truck a day or two after notifying Smith that the vent window would not close properly (Tr. 150).

Route driver Lisa Bohms drove a truck with faulty vent windows from February 1988 until late January 1989 before the vent windows were replaced. All this time, as she credibly testified, they closed most of the way, but would not lock. It was visible from the outside that they were not locked. (Tr. 104–105.) As she credibly testified, she could push the vent open with her hand from the outside and had done so a ''couple times'' (Tr. 119–120).

She did not report the faulty vent windows immediately, ''Because I had an alarm; and if anybody . . . opened the door . . . the alarm would have [gone] off.'' But in April, when the remote control to the alarm broke, she reported the problem to Vending Manager Dunahoo: ''I gave him the remote control and told him, 'It doesn't work. I need one, because my vents don't lock and anybody could get in my truck.''' He did not, however, replace the alarm or fix the windows. (Tr. 105–106.)

About June she told Supervisor Smith ''I needed an alarm and my vents fixed.'' He said he would take care of it, but he did not. (Tr. 107.)

In August, after Butner was discharged, Bohms asked Smith ''if they were just out to screw Joe or were they seriously concerned about a security breach, because my vents didn't lock and I had no alarm, and I didn't want to be responsible for the money and stock in my truck.'' He again promised to take care of it, but did not. (Tr. 107–108.)

Sometime that fall, General Manager Morris spoke to Bohms and another employee in the garage and asked about any problems. As Bohms credibly testified, she told Morris ''that my vents did not lock and that my alarm didn't work. He asked me if I had reported it, and I said yes.'' (Tr. 112–113.) Still the problem was not corrected.

On December 6, when the trial in this case was pending, Vending Manager Dunahoo issued a memo on ''Vending Security'' (G.C. Exh. 8). The last sentence read: ''If any alarms are not working, report to me by Wednesday, December 7, 1988.'' Bohms immediately told Dunahoo that ''I didn't have an alarm, and that my vents didn't lock.'' He said he would take care of it, but he did not. (Tr. 109–110.)

Finally, in the third week in January 1989 in a pretrial interview, Bohms was asked by the company counsel if she considered Butner's leaving the vent window open to be a security risk. She answered, ''Well, not really, because my vents have never locked.'' (Tr. 110–111.)

Still nothing was done until the following week, sometime after Thursday, January 26, 1989, when Bohms was injured on the job. By the time she was required to report back to work Sunday night, January 29 (as discussed below), both vent windows were replaced, but not the alarm. (Tr. 111–112.)

b. *The Company's contentions*

The Company in its brief completely ignores the evidence of alarms being inoperative but not repaired or replaced when reported, and trucks being driven with large amounts of money being carried outside the undersized safes. It also ignores driver Bohms' testimony that the vent windows on her truck could not be *locked* for nearly a year.

The Company merely contends in its brief (at 3) that its ''witnesses disputed the claims that any truck ever was knowingly permitted to operate with vent windows that would not *close* [emphasis added].'' It adds that ''Common sense alone supports [the Company's] insistence that it would not—and did not—permit trucks to operate that could not be secured.'' These contentions ignore the obvious. The doors of a truck are not ''secure'' if a vent window can be closed but not locked. Not only can the vent window be pushed open from the outside, but the inside latch reveals that the window is not locked when it remains up instead of being pressed down behind the bar (see Tr. II, 23).

Supervisor Smith, when called as a defense witness, testified on direct examination that ''Unless they tell me I don't know'' about vent windows that do not lock. He then added: ''I would say they would all lock *or at least close* [emphasis added]''—implying he was aware of the vent windows, which driver Bohms had repeatedly reported to him, that could be closed but not locked. He testified that if Vending Manager Dunahoo is there, he usually turns the requested repair in to Dunahoo and expects him to follow through. ''My main job is to be on the road.'' (Tr. 108–109.)

Defense witness Dunahoo also testified on direct examination that he finds out about needed repairs when ''An employee comes in and informs us.'' When asked if he knew of a company policy ''about vehicles being . . . capable of being secured, that is locked,'' he claimed that ''All vehicles have to be secured. We have alarm systems.'' (Tr. II, 95–96.) The company counsel did not ask him about inoperative alarms (which drivers Butner, Halcomb, and Bohms had repeatedly reported).

The counsel next asked Vending Manager Dunahoo about vent windows that were broken or that would not close, but not about vent windows that would not lock (Tr. II, 96–97):

. . . .

Q. Do you recall any employee telling you there were *broken* vent windows on the employee's vehicle?

A. Not specifically, not a specific employee. I can say, if an employee informed us of a *broken* vent window, we would repair it.

Q. Do you have a recollection of Lisa Bohms' telling you that her vent window would not *close*?

A. No. [Emphasis added.]

Thus, Dunahoo did not deny receiving reports from driver Bohms in April and again in December that the vent windows on her truck could not be *locked*, nor deny that when receiving a report of a broken vent window from Butner, the window was not repaired for weeks.

When called as a defense witness, General Manager Morris gave much testimony that I find was fabricated. From his demeanor on the stand, he appeared to be a most untrustworthy witness, willing to fabricate any testimony that might help the Company's cause.

Contrary to Vending Manager Dunahoo's and Supervisor Smith's testimony that they depended upon information from the drivers concerning needed repairs, Morris claimed that they checked the trucks themselves. He claimed: ''When we have the time we will, myself or Rick Dunahoo or the supervisor in the evening, while the trucks are back, we'll walk through to do a check. . . . I do it once a week.'' (Tr. 30–31.) This claim also conflicts with the argument in the Company's brief (at 21) that the ''Company personnel . . . acknowledged that they would not necessarily know about a defective window unless the employee involved brought the matter to their attention.''

Morris also claimed that ''there is no way I'm going [to] allow a truck to go out that isn't secure with our money'' (Tr. II, 22).

When asked on direct examination about Bohms' testimony that she had been driving for a year with a vent window that would not lock, Morris ignored her testimony that she reported to him in the fall about her vent windows not locking and her alarm not working. He responded that he checked her truck after the company counsel informed him (in January 1989) that she said (in the pretrial interview) that the vent window would not lock. (Tr. II, 22–23.)

Morris claimed that what he found was that although the latch on the vent window ''does not turn and go flush all the way down,'' it ''did go down far enough to be locked.'' As proof that the vent window actually did lock, he claimed he tried to open the window vent from the outside and broke it ''trying to force it.'' (Tr. II, 23, 67.) To the contrary, Bohms (who impressed me most favorably as an honest, trustworthy witness) credibly testified that the vent could not be locked and that she had twice pushed it open from the outside with her hand (Tr. 119–120). I discredit Morris' claims as further fabrications. If his uncorroborated claim were true that he did break the vent window when ''trying to force it,'' I would find it more likely that he broke the window when trying to force the latch down far enough to lock.

Morris is the only witness that claimed ''we asked employees to try to write things down'' to report needed repairs (Tr. II, 29). There is nothing in the December 6 memo on vending security about reporting any problems in writing, and Morris admitted on cross-examination that there are no forms for that purpose (Tr. II, 68). When recalled as a rebuttal witness, Butner credibly testified that he had never been told (in his nearly 4 years of employment there) to report needed repairs in writing (Tr. II, 122).

In view of the credited testimony of the General Counsel's witnesses about delayed or uncorrected repairs, the limited denials of defense witnesses Smith and Dunahoo, and the most untrustworthy testimony of General Manager Morris, I specifically discredit Morris' claim that ''If we knew that [a] truck was not secure, we would not let it go out'' (Tr. II, 32).

9. Concluding findings

I find that the General Counsel has made a prima facie showing sufficient to support the inference that Butner's union organizing was a motivating factor in the Company's decision to discharge him. *Wright Line*, 251 NLRB 1083, 1089 (1980).

I rely particularly on the evidence that (a) Butner was a favored employee before he began organizing, (b) the Company repeatedly called him a ''troublemaker'' for starting the Union, (c) it gave him three warning letters at one time (his first in over 3 years of employment) in reprisal for his union organizing, (d) it discriminatorily removed him from an overtime route on the day after the election, in the same conversation in which it urged him to seek other employment because of his prounion attitude, (e) it gave him a fourth warning letter in reprisal for his union organizing, (f) it summarily discharged this senior route driver after he carelessly left open a window vent at a university campus, although there was no indication that he had ever made that mistake before and although there was no financial loss to the Company, and (g) in doing so, it meted out disparate treatment.

The Company, however, contends in its brief (at 2) that a preponderance of the evidence demonstrates that Butner ''would have been dismissed regardless of his previous union activity.'' Particularly in view of the credited evidence of lax security, I disagree and find that the Company has failed to carry its burden under *Wright Line* to demonstrate that it would have discharged Butner in the absence of the protected conduct.

After weighing all the evidence I find that the reasons stated in the August 26 termination letter were pretexts and that the Company discharged Butner for supporting the Union, violated Section 8(a)(3) and (1).

c. *Denied time off for subpoenaed witness*

Route driver Bohms, a key witness for the General Counsel, injured her foot on her route early Thursday morning, January 26, 1989. Later that day she notified Vending Manager Dunahoo that the doctor wanted her to stay off her feet 2 or 3 days and that she was returning to the doctor on Saturday. (Tr. 91–93.) Meanwhile Supervisor Smith arranged to have a swing driver to cover her route Sunday night (Tr. II, 110–111).

That Saturday the doctor released her to return to work Sunday night. About 1 p.m. she spoke to Supervisor Smith, who said they had covered her route. She said she had been released to return to work but she would not be in Sunday night because ''I had to come down here'' (to the trial in Detroit) Monday morning and ''I didn't think I could stay

awake'' after working that night. Smith said, ''Okay.'' (Tr. 94–95.)

Smith then called General Manager Morris, who had arranged for both vent windows on Bohms' truck to be replaced after she advised the company counsel in the pretrial interview that she had been unable to lock them since the previous February. Evidently knowing that she would be an important witness for the General Counsel, Morris advised Smith that ''she had better be in to work.'' (Tr. II, 106.) Smith then called Bohms back and stated (Tr. 95):

> There was no way I could take my Monday off, that they didn't have anybody to cover me. I told him, I can't work and stay awake to drive to Detroit and get back. He said, ''Well . . . *it's not like you're testifying for our side*. You're going to have to come in.'' [Emphasis added.]

Smith admitted telling Bohms that she was subpoenaed ''not by us'' (Tr. II, 106). As required, Bohms worked her full shift and then testified (Tr. 96).

I agree with the General Counsel that Supervisor Smith's statement that Bohms would have to come in because ''it's not like you're testifying for our side,'' violated the Company's obligation not to coerce employees in the exercise of their right and obligation to attend scheduled Board hearings as subpoenaed witnesses. *Mid-East Consolidated Warehouse*, 247 NLRB 552, 556 (1980).

I therefore find, as alleged in the amended complaint, that the Company violated Section 8(a)(1) by informing an employee that because she was not testifying for the Company at an NLRB hearing, she could not have time off from work.

CONCLUSIONS OF LAW

1. By discriminatorily removing Joseph Butner from a weekly overtime route on March 24, issuing him a warning letter for being late on July 5, and discharging him on August 26, 1988, because of his support of the Union, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

2. By both President Krochmal and General Manager Morris telling an employee they were unhappy about his support of the Union, indicating that his job was in jeopardy, the Company violated Section 8(a)(1).

3. By reiterating its policy prohibiting employees from discussing was with other employees and by removing an employee from an overtime route for violating the illegal policy, the Company violated Section 8(a)(1).

4. By informing a subpoenaed employee that she could not have time off from work because she was not testifying for the Company at an NLRB trial, the Company further violated Section 8(a)(1).

5. The General Counsel has failed to prove other alleged violations within the 10(b) limitation period.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). It must also make him whole, plus interest, for lost earnings resulting from his discriminatory removal from the weekly overtime route.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Manimark Corporation, Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, removing from a weekly overtime route, issuing a warning letter to, or otherwise discriminating against any employee for supporting Local 124, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO or any other union.

(b) Indicating to any employee that the employee's job is in jeopardy for supporting a union.

(c) Refusing to permit an employee subpoenaed by the NLRB to have time off from work because the employee is not testifying for the Company.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Joseph Butner immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Reinstate Joseph Butner to the weekly overtime route at the University of Michigan Hospital.

(c) Remove from its files any reference to the unlawful discharge, removal from the overtime route, and warning for being late and notify the employee in writing that this has been done and that the discharge, removal, and warning will not be used against him in any way.

(d) Rescind its policy prohibiting employees from discussing wages with other employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Belleville, Michigan, copies of the attached notice marked ''Appendix.''[4] Copies of the notice,

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Rela-

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on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

tions Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

SUPPLEMENTAL DECISION

MARION C. LADWIG, Administrative Law Judge. My original decision in this proceeding was issued August 16, 1989.

On May 22, 1990, the Board issued an order remanding proceeding to administrative law judge, pointing out my failure to make credibility findings concerning the testimony by former route driver Walter Ford that shortly before the March 23, 1988 election, President Ralph Krochmal made a threat of plant closure. The Board remanded the case for me ''to prepare and serve on the parties a Supplemental Decision setting forth the resolution of such credibility issues, findings of fact, conclusions of law, and recommendations, including a recommended order where appropriate regarding the issue on remand.''

In compliance with the remand order, I make the following supplemental

FINDINGS OF FACT

Walter Ford was employed from December 1987 until he quit in July 1988 (Tr. 169–170). He testified that ''maybe four or five days'' or ''a week'' before the March 23, 1988 election, he was called into President Ralph Krochmal's office. There, in the presence of General Manager Gary Morris and Vending Manager Richard Dunahoo, Krochmal ''said that he could not financially stand for a Union coming in there,'' and that if it did, ''he would close the place down.'' (Tr. 173–174.)

When called as a defense witness, Krochmal denied that he told ''any employees about closing the company if the union won the election'' (Tr. II, 90). Neither Morris nor Dunahoo denied that Krochmal made the statement to Ford. Morris claimed, however, that (in one or more meetings before the election) that ''we said that [it] is absolutely not true'' that ''we were going to close the business'' (Tr. II, 48–49).

I credit Ford's testimony about the threat. As found in my original decision (JD slip op. at 2), ''By his demeanor on the stand, Ford impressed me as being an honest witness.'' In contrast, as found (at 9–10, 12–13), ''Krochmal appeared to be less than candid'' and ''General Manager Morris gave much testimony that I find was fabricated. From his demeanor on the stand, he appeared to be a most untrustworthy witness, willing to fabricate any testimony that might help the Company's cause'' and ''Finding Morris to be a most untrustworthy witness . . . I do not rely on his account of [another] meeting.'' I discredit Krochmal's denial and Morris' uncorroborated claim.

Based on these credibility resolutions, I find as alleged in the amended complaint, that ''Within a week of March 23, 1988, Respondent, acting through its agent, Ralph Krochmal, threatened an employee that Respondent would close if the Union won the election,'' violating Section 8(a)(1) of the Act.

SUPPLEMENTAL CONCLUSIONS OF LAW

4(a) By threatening an employee that the Company would close if the Union won the election, the Company also violated Section 8(a)(1).

On the supplemented findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Manimark Corporation, Belleville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging, removing from a weekly overtime route, issuing a warning letter to, or otherwise discriminating against any employee for supporting Local 124, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO or any other union.

(b) Threatening any employee that it will close the business if the Union wins an election.

(c) Indicating to any employee that the employee's job is in jeopardy for supporting a union.

(d) Refusing to permit an employee subpoenaed by the NLRB to have time off from work because the employee is not testifying for the Company.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Joseph Butner immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

(b) Reinstate Joseph Butner to the weekly overtime route at the University of Michigan Hospital.

(c) Remove from his files any reference to the unlawful discharge, removal from the overtime route, and warning for being late and notify him in writing that this has been done and that the discharge, removal, and warning will not be used against him in any way.

(d) Rescind its policy prohibiting employees from discussing wages with other employees.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Belleville, Michigan, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''